IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 138 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE
and
Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

COMMISSIONER OF INCOME TAX

Versus

M/S.VYAVASAYA

Appearance:

1. INCOME TAX REFERENCE No. 138 of 1991
MS MAUNA M. BHATT for Petitioner No. 1
MR RK PATEL for Respondent No. 1

CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE A.M.KAPADIA

Date of decision: 01/07/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

1. At the instance of the revenue, the following two questions, arising out of the order passed by the Income-tax Appellate Tribunal, Ahmedabad Bench-A, have been referred to this Court under the provisions of Section 256(1) of the Income-tax Act, 1961 (hereinafter referred to as the "Act").

(1) "Whether, the Appellate Tribunal is right in law and on facts in allowing office expenses disallowed by the I.T.O. U/s.40-A(3)?"

(2) "Whether, the Appellate Tribunal is right in law and on facts in allowing interest deficit disallowed by the ITO U/s. 40-A(3)?"

2. Standing Counsel Ms. Mauna Bhatt has appeared for the applicant-revenue whereas learned advocate Shri R.K. Patel has appeared for the respondent-assessee.

3. So far as question no.1, is concerned it has been submitted by the learned advocates that in I.T.R. No. 4/1992, similar legal issues had arisen and the said legal issues have been decided by this Court by its order dated 1st July, 2003 in favour of the assessee and against the revenue. In the circumstances, we answer the first question in the affirmative i.e. in favour of the assessee and against the revenue.

4. So far as the second question is concerned, upon perusal of the order passed by the Tribunal, we do not find any independent findings arrived at by the Tribunal on the said legal issue. However, it appears that the Tribunal has placed reliance on its earlier order passed in the case of C.I.T. Vs. Mrinalini V. Sarabhai, I.T.A. No. 1870/Ahd/1986 and by placing reliance upon the findings of the said order, the Tribunal had come to a particular conclusion. In our opinion, as the conclusion arrived at by the Tribunal is based on the facts of another case, in absence of the discussion regarding the facts of the case of the assessee for the relevant assessment year, we would not be in a position to answer the question and, therefore, we decline to answer the second question.

The reference stands disposed of with no order as to costs.

(A.R. DAVE,J.)

(A.M. KAPADIA,J.)

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